IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.636 of 2007

The Commissioner of Income-tax,
Salem. ..Appellant

Vs

Chan Basha ..Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'D', Chennai in I.T.A. No.2880/Mds/2004 dated 24.03.2006 for the assessment year 1999-2000, against the order in ITA.No.102/03-04, dated 5.8.04 on the file of the Commissioner of Income Tax (Appeals) Salem against the order in PAN.GIR.No.C3774, dated 31.03.03 on the file of the Income Tax Officer Ward I (I), Salem-7.

For Appellant : Mr.T.Ravi Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'D', Chennai in I.T.A. No.2880/Mds/2004 dated 24.03.2006 raising the following substantial question of law:-

> Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that there is no contribution made by the assessee during the assessment year for the construction, even though the investments are not contained in any books of account and they are unexplained or the explanation is unsatisfactory, the value of the investment is to be deemed to be the income of the assessee for the financial year preceding

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the assessment year under section 69 of the Income-tax Act, 1961?

2. The facts leading to the above substantial question of law are as under:

The assessee is an individual engaged in the business of footwear. The relevant assessment year is 1999-2000 and the corresponding accounting year ended on 31.03.1999. The assessee has not filed Return of income and hence notice under Section 142(1) of the Income-tax Act ("Act" in short) was issued, calling upon the assessee to file his Return of income for the assessment year. In response to the notice, the assessee filed his Return of income on 24.03.2003 admitting a total income of Rs.49,866/-. Later notice under Section 143(2) was issued to the assessee. The assessment was completed under Section 143(3) r/w Section 147 of the Act determining the total income at Rs.10,72,290/-. While completing the assessment, the Assessing Officer treated 50% of the difference in the cost of construction, i.e., Rs.10,22,425/- as assessee's unaccounted income from business and added the same to his total income. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) deleted the addition and set aside the order of the Assessing Officer. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeal and confirmed the order of the C.I.T.(A). Hence the present appeal by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the Departmental Valuer estimated the cost of construction at Rs.42,28,700/- as against the estimated cost of construction at Rs.21,83,855/-. Before the Departmental Valuer the assessee had filed the year-wise investment from which it could be seen that the assessee had contributed towards the capital for Kalyana Mandapam upto 31.03.1999 at Rs.11,33,855/- and his wife C.Jabeena at Rs.10,50,000/-. The investments were not reflected in the books of account and the assessee also did not offer any explanation for the difference in the cost of construction. Hence the Assessing Officer is right in making addition of the difference amount in the hands of the assessee under Section 69 of the Act.

4. Heard the counsel. The assessee had shown the cost of construction of Kalyana Mandapam at Rs.21,83,855/-. The Departmental Valuer estimated the cost of construction at Rs.42,28,700/-. During the year under appeal, the first appellate authority as well as the Tribunal found that there was no contribution by the assessee towards construction. Paragraph-5 of the C.I.T(A)'s order, reads as follows:-

> "Even on merits, there cannot be a question of addition when there is no contribution from the appellant; the information of which is available on record. Another point to be considered is, that, the valuation report shows the period of construction from April 1987 to March 1999 and the contribution of all the partners from the beginning to end has been given. In the year under appeal, the appellant had apparently not contributed any amount towards investment."

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The said finding of the C.I.T.(A) was confirmed by the Tribunal and the same has not been controverted. Hence the addition made by the Assessing Officer was rightly deleted by the authorities below. The concurrent findings given by both the authorities below are based on valid materials and evidence. Recently, the Supreme Court in the case of Commissioner of Income-tax Vs. P.Mohanakala (291 ITR 278), held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under the circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs.

km

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench "D",
   Rajaji Bhavan,Besant Nagar,Chennai-90. (5 Copies)

2. The Commissioner of Income-tax (Appeals),
   No.3, Gandhi Road, Salem-636 007.

3. The Income-tax Officer,
   Ward-I(1), Salem-7.

4. The Commissioner of Income Tax, Salem.

+1 cc to Mr.N.Muralikumaran, Advocate Sr.No.34899.

ASM(CO)
dcp/27.06.07

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